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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/791,694	03/02/2004	David R. Zittel	338.071	8765

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EXAMINER

BECKER, DREW E

ART UNIT	PAPER NUMBER
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1761

DATE MAILED: 01/18/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/791,694

Applicant(s)

ZITTEL ET AL.

Examiner

Drew E. Becker

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 January 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 and 3-52 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1 and 3-52 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☒ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>1/10/05; 7/15/04</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Oath/Declaration

1. The reissue oath/declaration filed with this application is defective because it fails to identify at least one specific error which is relied upon to support the reissue application. See 37 CFR 1.175(a)(1) and MPEP § 1414.
2. Claims 1 and 3-52 are rejected as being based upon a defective reissue oath under 35 U.S.C. 251 as set forth above. See 37 CFR 1.175.

The nature of the defect(s) in the oath is set forth in the discussion above in this Office action.

Double Patenting

3. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

4. Claims 1 and 3-52 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-15 of U.S. Patent No. 6,187,360 in view of Zittel [Pat. No. 5,133,249] and Zittel [Pat. No.

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5,456,091]. It would have been obvious to one of ordinary skill in the art to operate the blancher at the pressures and flow rates taught by Zittel ('249) and Zittel ('091) since they are all directed to methods of blanching foods and since these operating conditions were proven to be effective for blanching foods.

5. Claims 1 and 3-52 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-41 of U.S.

Patent No. 6,263,785 in view of Zittel [Pat. No. 5,133,249] and Zittel [Pat. No.

5,456,091]. It would have been obvious to one of ordinary skill in the art to operate the blancher at the pressures and flow rates taught by Zittel ('249) and Zittel ('091) since they are all directed to methods of blanching foods and since these operating conditions were proven to be effective for blanching foods.

Claim Rejections - 35 USC § 112

6. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

7. Claims 41-52 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

8. Claims 41-45, 47-52 recite "its". It is not clear what "it" is.

Claim Rejections - 35 USC § 102

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9. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

10. Claim 42 is rejected under 35 U.S.C. 102(b) as being anticipated by Zittel [Pat. No. 5,456,091].

Zittel teaches a method of blanching (column 1, line 14) by providing a blancher with a chamber, inlet, outlet, rotary mechanism, and a bottom manifold with pairs of orifices (Figure 1, #20, 26, 38, 40, 60, 62), introducing food into a heat transfer medium (Figure 3, #94), discharging fluid from the orifices (Figure 4, #62), heating the food (column 1, line 14), urging the food to the outlet and removing it (Figure 2, #74; column 2, line 45), and a fluid rate of 50-150 gpm/nozzle (column 3, line 60).

11. Claim 41 is rejected under 35 U.S.C. 102(b) as anticipated by Zittel [Pat. No. 5,133,249].

Zittel teaches a method of blanching by providing a blancher with a chamber, inlet, outlet, rotary mechanism, and a pair of bottom manifold with pairs of orifices (Figure 1, #20, 26, 38, 40, 58, 60), introducing food into a heat transfer medium (Figure 3, #36 & 56), discharging fluid from the orifices (column 3, line 43 to column 4, line 36), heating the food (column 4, lines 1-23), urging the food to the outlet and removing it (column 2, line 60; column 5, line 9), discharging gas such as steam at 25-125 psi (column 4, line 8), and pressurized air at 10-100 psi (column 4, line 25).

Claim Rejections - 35 USC § 103

12. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

13. Claims 1, 5, 18, 21, 44-45, 48, and 51 are rejected under 35 U.S.C. 103(a) as being unpatentable over Zittel [Pat. No. 5,133,249] in view of Zittel [Pat. No. 5,456,091]. Zittel ('249) a method of blanching by providing a blancher with a chamber, inlet, outlet, rotary mechanism, and a pair of bottom manifold with pairs of orifices (Figure 1, #20, 26, 38, 40, 58, 60), introducing food into a heat transfer medium in the form of water (Figure 3, #36 & 56), discharging fluid from the orifices (column 3, line 43 to column 4, line 36), heating the food (column 4, lines 1-23), urging the food to the outlet and removing it (column 2, line 60; column 5, line 9), discharging gas such as steam at 25-125 psi (column 4, line 8), and pressurized air at 10-100 psi (column 4, line 25). Zittel ('249) does not recite the fluid being a liquid (claim 44) discharged at greater than 20 gpm (claims 1, 5, 45), and a food depth of at least 8" (claims 18, 21, 48, 51). Zittel ('091) teaches a method of blanching (column 1, line 14) by providing a blancher with a chamber, inlet, outlet, rotary mechanism, and a bottom manifold with pairs of orifices (Figure 1, #20, 26, 38, 40, 60, 62), introducing food into a heat transfer medium (Figure 3, #94), discharging water from the orifices (Figure 4, #62), heating the food (column 1, line 14), urging the food to the outlet and removing it (Figure 2, #74; column 2, line 45), a fluid rate of 50-150 gpm/nozzle (column 3, line 60), 42-48 psi (page 3 of the IDS filed

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January 31, 2005), and a food depth of 18" (column 1, lines 30-36 of applicants' specification). It would have been obvious to one of ordinary skill in the art to incorporate the water addition and flow rate of Zittel ('091) into the invention of Zittel ('249) since both are directed to methods of blanching foods in a cylindrical housing with a rotary mechanism, since Zittel ('249) already included addition of steam and air for the purpose of increased agitation (column 3, line 42 to column 4, line 36) as well as using water as the heat transfer medium (Figure 3, #56), since Zittel ('091) taught that both water and gas could be used together for increased agitation (column 5, line 2), and since the water manifold of Zittel ('091) provided a means for supplying increased agitation at a reduced cost compared to gas agitation (column 1, lines 11-41).

14. Claims 8-16, 35, and 38 are rejected under 35 U.S.C. 103(a) as being unpatentable over Zittel [Pat. No. 5,133,249] in view of Zittel [Pat. No. 6,263,785].

Zittel ('249) a method of blanching by providing a blancher with a chamber, inlet, outlet, rotary mechanism, and a pair of bottom manifold with pairs of orifices (Figure 1, #20, 26, 38, 40, 58, 60), introducing food into a heat transfer medium in the form of water (Figure 3, #36 & 56), discharging fluid from the orifices (column 3, line 43 to column 4, line 36), heating the food (column 4, lines 1-23), urging the food to the outlet and removing it (column 2, line 60; column 5, line 9), discharging gas such as steam at 25-125 psi (column 4, line 8), pressurized air at 10-100 psi (column 4, line 25), the food being pasta (column 1, line 13) which inherently had a density of less than 55 lb/ft³. Zittel ('249) does not recite a flow rate of at least 60 CFM (claim 8), withdrawing gas (claims 9, 14), a flow rate of at least 100 CFM per foot length (claim 11), a flow rate of at least 200 CFM per

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foot length (claim 12), a flow rate of at least 10 CFM (claim 13), a flow rate of at least 10 CFM per foot length (claim 16), a flow rate of at least 60 SCFM per foot length (claim 35), and a flow rate of at least 10 SCFM per foot length (claim 38). Zittel ('785) teaches a method of blanching by withdrawing gas (Figure 1, #78), a flow rate of 1,000-3,000 lb/hr of steam (column 12, line 22), a withdrawal rate of 1,000-3,000 CFM (column 12, line 26), and a length of 24 ft (column 2, line 15). It would have been obvious to one of ordinary skill in the art to incorporate the flow rate and venting of Zittel ('785) into the invention of Zittel ('249) since both are directed to methods of blanching foods in a cylindrical housing with a rotary mechanism, since Zittel ('249) already included steam and air but simply did not mention the flow rate (column 3, line 43 to column 4, line 36), and since the flow rate of Zittel ('785) provided an effective means for blanching.

15. Claims 3-4, 6-7, 17, 20, 23-24, 26-27, 29-30, 32-33, 42-43, and 46 are rejected under 35 U.S.C. 103(a) as being unpatentable over Zittel [Pat. No. 5,133,249], in view of Zittel [Pat. No. 5,456,091] as applied above, and further in view of Zittel [Pat. No. 6,263,785].

Zittel ('249) and Zittel ('091) teach the above mentioned concepts. Zittel ('091) also teaches packaged foods which inherently were at least 55 lb/ft³ (Figure 3, #54). Zittel ('249) and Zittel ('091) do not recite a flow rate of at least 60 gpm per foot (claim 3, 6, 26), at least 60 CFM (claim 17), at least 10 SCFM (claims 20, 46), at least 10 SCFM per foot (claim 23, 29, 32), and at least 20 gpm per foot (claim 42-43). Zittel ('785) teaches a method of blanching by withdrawing gas (Figure 1, #78), a flow rate of 1,000-3,000 lb/hr of steam (column 12, line 22), a withdrawal rate of 1,000-3,000 CFM (column 12, line

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26), and a length of 24 ft (column 2, line 15). It would have been obvious to one of ordinary skill in the art to incorporate the flow rate of Zittel ('785) into the invention of Zittel ('249) since both are directed to methods of blanching foods in a cylindrical housing with a rotary mechanism, since Zittel ('249) already included steam and air but simply did not mention the flow rate (column 3, line 43 to column 4, line 36), and since the flow rate of Zittel ('785) provided an effective means for blanching.

16. Claims 22, 37, 47, 49-50, and 52 are rejected under 35 U.S.C. 103(a) as being unpatentable over Zittel [Pat. No. 5,133,249], in view of Zittel [Pat. No. 5,456,091] as applied above, and further in view of Zittel [Pat. No. 6,105,485].

Zittel ('249) and Zittel ('091) teach the above mentioned concepts. Zittel ('091) also teaches packaged foods which inherently were at least 55 lb/ft³ (Figure 3, #54). Zittel ('249) and Zittel ('091) do not recite a food rate of at least 8,000 lb/hr (claim 22, 28, 37, 47, 49, 52), and a food rate of at least 4,500 lb/hr (claim 50). Zittel ('485) teaches a method of blanching food by providing it at a rate of at least 20,000 lb/hr (column 4, line 31). It would have been obvious to one of ordinary skill in the art to incorporate the food rate of Zittel ('485) into the invention of Zittel ('249), in view of Zittel ('091), since all are directed to methods of blanching foods, since Zittel ('249) already included an elongated, cylindrical housing containing a rotary mechanism (Figure 1, #20), since Zittel ('249) already required a means for loading and unloading food products (column 5, line 8), and since the loading and unloading devices of Zittel ('485) provided an effective means for processing large quantities of foods (column 4, line 31).

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17. Claims 19, 25, 28, 31, and 34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Zittel [Pat. No. 5,133,249], in view of Zittel [Pat. No. 5,456,091] and Zittel [Pat. No. 6,263,785], as applied above, and further in view of Zittel [Pat. No. 6,105,485].

Zittel ('249), Zittel ('785), and Zittel ('091) teach the above mentioned concepts. Zittel ('091) also teaches packaged foods which inherently were at least 55 lb/ft³ (Figure 3, #54). Zittel ('249), Zittel ('785), and Zittel ('091) do not recite a food rate of at least 8,000 lb/hr. Zittel ('485) teaches a method of blanching food by providing it at a rate of at least 20,000 lb/hr (column 4, line 31). It would have been obvious to one of ordinary skill in the art to incorporate the food rate of Zittel ('485) into the invention of Zittel ('249), in view of Zittel ('091) and Zittel ('785), since all are directed to methods of blanching foods, since Zittel ('249) already included an elongated, cylindrical housing containing a rotary mechanism (Figure 1, #20), since Zittel ('249) already required a means for loading and unloading food products (column 5, line 8), and since the loading and unloading devices of Zittel ('485) provided an effective means for processing large quantities of foods (column 4, line 31).

18. Claim 40 is rejected under 35 U.S.C. 103(a) as being unpatentable over Zittel [Pat. No. 5,133,249], in view of Zittel [Pat. No. 6,263,785] as applied above, and further in view of Zittel [Pat. No. 6,105,485].

Zittel ('249) and Zittel ('785) teach the above mentioned concepts. Zittel ('249) and Zittel ('785) do not recite a food rate of at least 8,000 lb/hr. Zittel ('485) teaches a method of blanching food by providing it at a rate of at least 20,000 lb/hr (column 4, line 31). It

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would have been obvious to one of ordinary skill in the art to incorporate the food rate of Zittel ('485) into the invention of Zittel ('249), in view of Zittel ('785), since all are directed to methods of blanching foods, since Zittel ('249) already included an elongated, cylindrical housing containing a rotary mechanism (Figure 1, #20), since Zittel ('249) already required a means for loading and unloading food products (column 5, line 8), and since the loading and unloading devices of Zittel ('485) provided an effective means for processing large quantities of foods (column 4, line 31).

19. Claims 36 and 39 are rejected under 35 U.S.C. 103(a) as being unpatentable over Zittel [Pat. No. 5,133,249], in view of Zittel [Pat. No. 6,263,785] as applied above, and further in view of Zittel [Pat. No. 5,456,091].

Zittel ('249) and Zittel ('785) teach the above mentioned concepts. Zittel ('249) and Zittel ('785) do not recite a food depth of at least 8". Zittel ('091) teaches a method of blanching (column 1, line 14) by providing a blancher with a chamber, inlet, outlet, rotary mechanism, and a bottom manifold with pairs of orifices (Figure 1, #20, 26, 38, 40, 60, 62), introducing food into a heat transfer medium (Figure 3, #94), discharging water from the orifices (Figure 4, #62), heating the food (column 1, line 14), urging the food to the outlet and removing it (Figure 2, #74; column 2, line 45), a fluid rate of 50-150 gpm/nozzle (column 3, line 60), 42-48 psi (page 3 of the IDS filed January 31, 2005), and a food depth of 18" (column 1, lines 30-36 of applicants' specification). It would have been obvious to one of ordinary skill in the art to incorporate the water addition and flow rate of Zittel ('091) into the invention of Zittel ('249), in view of Zittel ('785), since all are directed to methods of blanching foods in a cylindrical housing with a rotary


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mechanism, since Zittel ('249) already included addition of steam and air for the purpose of increased agitation (column 3, line 42 to column 4, line 36) as well as using water as the heat transfer medium (Figure 3, #56), since Zittel ('091) taught that both water and gas could be used together for increased agitation (column 5, line 2), since the water manifold of Zittel ('091) provided a means for supplying increased agitation at a reduced cost compared to gas agitation (column 1, lines 11-41), and since the depth of Zittel ('091) would have provided a greater amount of food which can be processed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Drew E. Becker whose telephone number is 571-272-1396. The examiner can normally be reached on Mon.-Fri. 8am to 4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


DREW BECKER
PRIMARY EXAMINER
12-1-05